

WESTERN STATES CONTRACTING ALLIANCE  
MASTER PRICE AGREEMENT  
for  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27165

This Agreement is made and entered into by Howard Technology Solutions, PO Box 1590, Laurel, MS 39441 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,  
**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the

Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

## 1. Definitions

**“Announced Promotional Price”** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**“Consumables”** those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**“Configuration”** in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

**“Contract”** means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

**“Contractor”** means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

**“CPV Member”** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

**“CPV Program.”** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase

from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The "Master Price Agreement" is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement

official or other designated procurement official must be a Participating State or Participating Entity.

**“Materials Management Division” or “MMD”** means the procurement official for the State of Minnesota or a designated representative.

**“NASPO”** means the National Association of State Procurement Officials

**“Participating Addendum” or “Participating Addenda”** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

**“Participating State” or “Participating Entity”** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

**“PDA”** means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Peripherals”** means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Permissive Price Agreement”** means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

**“Per Transaction Multiple Unit Discount”** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**“Political Subdivision”** means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**“Price Agreement/Master Price Agreement”** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**“Procurement Manager”** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**“Product(s)”** means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Products and Services Schedule Prices” or “PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity’s price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

**“Purchase Order”** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**“Purchasing Entity”** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**“Refurbished Products”** are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

**“Services”** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied

under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**“Servicing Subcontractor/Subcontractor/Reseller Agent”** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

**“Standard Configurations” or “Premium Savings Configurations (Packages)”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**“State Procurement Official”** means the director of the central purchasing authority of a state.

**“Storage Solution/Auxiliary Storage”** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Takeback Program”** means the Contractor’s process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

**“Trade In”** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**“Travel”** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

**"WSCA/NASPO Contract Administrator"** means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

## **2. Scope of Work**

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities The Contractor shall offer a Takeback Program for all products covered by this Agreement.

## **3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

## **4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

## **5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of

acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

## **6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

### **A. Acceptance**

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor in a timely manner of non-acceptance of a product or service.

### **B. Payment of Invoice**

Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

### **C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the



Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

## **9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

## **10. Shipment and Risk of Loss**

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within **three to five** days after receipt of a purchase order, by a reliable and insured shipping company.

## **11. Warranties**

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the

Product's ability to meet those mandatory specifications.

3. The Product will be suitable for the ordinary purposes for which such Product is used,
  4. The Product has been properly designed and manufactured for its intended use, and
  5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
  6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period begins.
  7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
    - a) Limited Warranty for Desktops and Server Systems
    - b) Limited Warranty for Portable Systems
    - c) Limited Warranty for Tablet PCs
    - d) Limited Warranty for PET Presentation Cart
    - e) Warranty Statement for Third Party Products
- B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products.
- D. The basic warranty shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

## **12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

### **13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

### **14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following

provisions:

- A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

***Band 1: Servers***

***Band 2: Workstations***

***Band 3: Printers***

***Band 4: Storage***

***Band 5: PDA's***

***Band 6: Packages***

***Band 7: Monitors***

***Operating Systems***

***Local Area Networks and related software***

***Projectors***

***General Purpose Software***

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

## **15. Product Substitutions**

### **A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

### **B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a support agreement.

**17. Takeback and Other Environmental Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

**18. Product Delivery**

Contractor agrees to deliver Products to Purchasing Entities within 10 – 14 business days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does

not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification, Hold Harmless and Limitation of Liability**

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrong doing of the State.

**25. Amendments**

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed,



or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

## **29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

## **30. Equal Opportunity Compliance**

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

**31. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**32. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**33. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**34. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out

of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

**35. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

**36. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

**37. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**38. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

**39. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this

Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

#### **40. WSCA/NASPO Contract Administrator**

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

#### **41. Survival**

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31,

Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisitions Supervisor  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

**To Howard:**

Howard Technology Solutions  
Attn: Melissa Reeves  
Contract Facilitator  
PO Box 1590  
Laurel, Mississippi 39441  
Fax: 601.399.5077  
Email: [mreeves@howard.com](mailto:mreeves@howard.com)

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-

twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<b><u>Period End</u></b>	<b><u>Report Due</u></b>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaed by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. Purchasing Entities will be encouraged to use the reporting format

developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

#### **45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages, as specified in a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
  5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

#### **46. Audits**

##### **A. Website Pricing Audit**

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation. On a monthly basis the Contractor will save a configuration from the website, compare the discount applied on the site to the discounts proposed on the contract, and save all documentation.

1. The product audit will closely monitor the products and services

listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

**B. Sales Audit**

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C.** Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

**49. Ownership**

- A. Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.
- B. Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Contract



shall be considered "works for hire" as defined in the U.S. Copyright Act.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the

Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

**57. E-Rate Program**

The Contractor's E-Rate identification number and list of E-Rate qualifying products is as follows: 143022153. Below is a list of E-Rate qualifying products provided directly by Howard Technology Solutions:

Access Points  
Battery Backup devices  
Cabinets  
Cable Modem  
Cabling  
Client Access License  
Conduit/Raceway  
Connectors  
Coupler  
Edge Device  
Faceplate  
Firewall  
Hub  
Local Area Network  
Maintenance and Technical Support  
Media Converter  
Network Interface Card (NIC)  
Network Switches  
Racks  
Remote Access Components  
Routers  
Serial Cards  
Servers (DNS, DHCP, Web, Proxy)  
Software  
Storage Products  
System Improvements and Upgrades  
Terminal Adapter  
Transceiver  
TX to FX Converter  
UPS

Wire and Cable Maintenance  
Wireless Local Area Network

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

**1. HOWARD TECHNOLOGY SOLUTIONS**

The Contractor certifies that the appropriate person(s)

By: *Bruce Howard*

Title: CEO

Date: May 20, 2009

By: *Melvin Reiers*

Title: Contract Facilitator

Date: May 20, 2009

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopischke*

Title: Acquisitions Supervisor

Date: *5/26/09*

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: *Brenda Willard*

Date:

Original signed

MAY 23 2009

By Brenda Willard

## **EXHIBIT A – ADDITIONAL WARRANTIES**

Howard Technology Solutions has several warranty options from which its customers may choose. With the exception of portable systems (i.e. notebooks, tablets pcs, etc...) all Howard computers come standard with a three-year limited, one-year next business day on-site warranty.

All Howard computers can be upgraded from the standard limited warranty. So, depending on the extended warranty option of your choice, you are completely covered for parts, labor, and on-site service for the number of years you include with your selected option.

Howard's toll-free technical support is available 7-days a week, 24- hours a day. This is good for the life of the system.

Howard Technology Solutions, recognizing the need to provide our partners and customers with access to the very latest in peripherals and other technology products, has established agreements and partnerships with many of the leading distributors and manufacturers. Over 190,000 products such as printers, scanners, digital cameras, networking equipment (routers, switches, etc...) and software are available online directly from our website. Any items purchased for the online catalog separate from the Howard computers base system will be covered by the manufacturer's warranty. Items purchased as part of a Howard computer base system are covered by Howard Technology Solutions' Limited Warranty Agreement.

### **Limited Warranty for Desktop and Server Systems**

#### **1. Three Year Limited Warranty, Next Business Day One Year On-Site**

Howard Industries, Inc. (hereinafter "Howard") warrants that the Howard branded product(s) purchased by you will be free from defects in materials and/or workmanship under normal use for the purchased warranty period starting from the date of product shipment with the following **EXCEPTIONS**:

- a. Defective CDs, DVDs, diskettes or other software media that are delivered with your product will be replaced by Howard or its suppliers for ninety days from the date you receive your product.
- b. Howard DOES NOT WARRANT ANY SOFTWARE PRODUCTS, INCLUDING THE OPERATING SYSTEMS PREINSTALLED BY HOWARD TECHNOLOGY SOLUTIONS.
- c. Defective accessories or peripherals bundled with a Howard branded product (limited to the monitor, keyboard, and mouse) are subject to the terms of the warranty duration and type purchased from Howard Technology Solutions. All other defective accessories or peripherals, other than software, that are delivered with your product will be replaced by Howard or its suppliers for 21 days from the date you received your product. Manufacturer's warranty applies after initial 21 days.
- d. If purchased, next business day on-site warranty service is provided for the time period listed on the packing slip or invoice and begins the date of product shipment for the Howard Technology Solutions products. The hours of next business day on-site warranty service will be provided Monday – Friday from 8:00 AM to 5:00 PM local time excluding Howard Technology Solutions holidays as published on the Howard Technology Solutions website at [www.howard.com](http://www.howard.com). Second business day response at times may be required in case of delays beyond Howard Technology Solutions' control (such as acts of God or calls reported to Technical Support after 3:00 PM CST). A Howard authorized third party vendor may provide on-site service. Note: Some repairs may require the unit to be returned to Howard for depot service at an authorized service center.
- e. On-site warranty service is not available for Field Replaceable Units (FRU) such as monitors, keyboards, modular hard drives, mice, or similar external components of the product.

- f. Batteries, chargers, carrying cases, and AC power adapters for all portable systems (i.e. PDA, Laptops, Tablet PCs, etc...) are covered by a limited warranty for only the initial ONE-YEAR PERIOD after product delivery.

To obtain service under this limited warranty, you must contact Howard Technical Support within the warranty period. Technical Support personnel will work to resolve issues professionally and quickly, however, you must provide reasonable assistance in order to facilitate and/or receive support services. If Howard Technical Support is unable to correct the problem they may authorize a replacement part or parts, on-site service or a product replacement. ON-SITE SERVICE AND PRODUCT REPLACEMENTS ARE CONSIDERED OPTIONS OF LAST RESORT. All replaced parts must be returned to Howard. You will be invoiced for defective replacement parts not returned to Howard within two (2) weeks of receipt of the replacement parts.

Howard does not warrant damages or defects to the Howard product under the following conditions: misuse, abuse, neglect, acts of God, fire, vandalism, civil disturbances, or war, unauthorized service or repair of the Howard products, damage from electrical power problems, usage of parts or components not supplied by Howard, failure to follow product instructions and guidelines, unauthorized changes to the Howard, shipping damage (other than during original shipment from Howard), failure to perform preventative maintenance, or damage caused by peripherals or software or from other external causes.

Howard will, under the warranty period, repair or replace defective parts with new or serviceable used parts. This determination will be at the sole discretion of Howard. Howard owns all removed and repaired parts from the Howard product. The repair or replacement of a Howard product does not extend the warranty of said computer product. Spare parts are warranted to be free from defects in material or workmanship for thirty (30) days or for the remainder of the Limited Warranty Period (whichever is longer) of the Howard product in which they are installed.

This limited warranty is extended only to the original purchaser and is non-transferable. In addition, this warranty is only valid within the United States of America. For this warranty to be valid, the product must have been purchased directly from Howard or from an authorized representative of Howard.

***THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. HOWARD DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. EXCEPT FOR THE OBLIGATIONS SET FORTH IN THIS WARRANTY STATEMENT HOWARD SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR LOSSES IN PROFITS, LOSSES IN REVENUE, LOSSES IN SAVINGS, LOSSES OF DATA, DOWNTIME, COSTS OF CAPITAL, COST OF REPLACEMENT EQUIPMENT (TEMPORARY OR PERMANENT), COSTS OF TIME, THIRD PARTIES' CLAIMS OR INJURY TO PROPERTY.***

The limit of the liability of Howard to repair its computer product after a reasonable amount of time and a reasonable number of attempts shall be the replacement of the Howard product or a refund of the original purchase price of the computer product. The decision regarding replacement versus refund shall be at the sole discretion of Howard. The above options are the only remedies for any perceived breach of warranty by Howard.

In states that do not allow limitations on implied warranties or on the length of implied warranties, the above limitations may not apply to you. In states that do not allow for the exclusion or limitation of incidental and consequential damages, the above limitations and exclusions may not apply to you. This warranty gives you specific legal rights. To determine other rights you may have, review your applicable state laws.

## **2. Warranty Extensions and Upgrades**

Howard Technology Solutions currently offers various options to extend or upgrade the Limited Warranty of the Howard branded product. This extension is only available for purchase during the first year warranty coverage period from Howard Technology Solutions. Call 1-888-912-3151 for pricing and availability.

## Limited Warranty for Portable Systems

### 1. One Year Limited Warranty, Return to Depot

Howard Industries, Inc. (hereinafter "Howard") warrants that the Howard branded product(s) purchased by you will be free from defects in materials and/or workmanship under normal use for the purchased warranty period starting from the date of product shipment with the following **EXCEPTIONS**:

- g. Defective CDs, DVDs, diskettes or other software media that are delivered with your product will be replaced by Howard or its suppliers for ninety days from the date you receive your product.
- h. Howard DOES NOT WARRANT ANY SOFTWARE PRODUCTS, INCLUDING THE OPERATING SYSTEMS PREINSTALLED BY HOWARD TECHNOLOGY SOLUTIONS.
- i. Defective accessories or peripherals bundled with a Howard branded product (limited to the monitor, keyboard, and mouse) are subject to the terms of the warranty duration and type purchased from Howard Technology Solutions. All other defective accessories or peripherals, other than software, that are delivered with your product will be replaced by Howard or its suppliers for 21 days from the date you received your product. Manufacturer's warranty applies after initial 21 days.
- j. If purchased, next business day on-site warranty service is provided for the time period listed on the packing slip or invoice and begins the date of product shipment for the Howard Technology Solutions products. The hours of next business day on-site warranty service will be provided Monday – Friday from 8:00 AM to 5:00 PM local time excluding Howard Technology Solutions holidays as published on the Howard Technology Solutions website at [www.howard.com](http://www.howard.com). Second business day response at times may be required in case of delays beyond Howard Technology Solutions' control (such as acts of God or calls reported to Technical Support after 3:00 PM CST). A Howard authorized third party vendor may provide on-site service. Note: Some repairs may require the unit to be returned to Howard for depot service at an authorized service center.
- k. On-site warranty service is not available for Field Replaceable Units (FRU) such as monitors, keyboards, modular hard drives, mice, or similar external components of the product.
- l. Batteries, chargers, carrying cases, and AC power adapters for all portable systems (i.e. PDA, Laptops, Tablet PCs, etc...) are covered by a limited warranty for only the initial ONE-YEAR PERIOD after product delivery.

To obtain service under this limited warranty, you must contact Howard Technical Support within the warranty period. Technical Support personnel will work to resolve issues professionally and quickly, however, you must provide reasonable assistance in order to facilitate and/or receive support services. If Howard Technical Support is unable to correct the problem they may authorize a replacement part or parts, on-site service or a product replacement. ON-SITE SERVICE AND PRODUCT REPLACEMENTS ARE CONSIDERED OPTIONS OF LAST RESORT. All replaced parts must be returned to Howard. You will be invoiced for defective replacement parts not returned to Howard within two (2) weeks of receipt of the replacement parts.

Howard does not warrant damages or defects to the Howard product under the following conditions: misuse, abuse, neglect, acts of God, fire, vandalism, civil disturbances, or war, unauthorized service or repair of the Howard products, damage from electrical power problems, usage of parts or components not supplied by Howard, failure to follow product instructions and guidelines, unauthorized changes to the Howard, shipping damage (other than during original shipment from Howard), failure to perform preventative maintenance, or damage caused by peripherals or software or from other external causes.

Howard will, under the warranty period, repair or replace defective parts with new or serviceable used parts. This determination will be at the sole discretion of Howard. Howard owns all removed and repaired parts from the Howard product. The repair or replacement of a Howard product does not extend the warranty of said computer product. Spare parts are warranted to be free from defects in material or workmanship for thirty (30) days or for the remainder of the Limited Warranty Period (whichever is longer) of the Howard product in which they are installed.

This limited warranty is extended only to the original purchaser and is non-transferable. In addition, this warranty is only valid within the United States of America. For this warranty to be valid, the product must have been purchased directly from Howard or from an authorized representative of Howard.

**THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS**

*FOR A PARTICULAR USE. HOWARD DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. EXCEPT FOR THE OBLIGATIONS SET FORTH IN THIS WARRANTY STATEMENT HOWARD SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR LOSSES IN PROFITS, LOSSES IN REVENUE, LOSSES IN SAVINGS, LOSSES OF DATA, DOWNTIME, COSTS OF CAPITAL, COST OF REPLACEMENT EQUIPMENT (TEMPORARY OR PERMANENT), COSTS OF TIME, THIRD PARTIES' CLAIMS OR INJURY TO PROPERTY.*

The limit of the liability of Howard to repair its computer product after a reasonable amount of time and a reasonable number of attempts shall be the replacement of the Howard product or a refund of the original purchase price of the computer product. The decision regarding replacement versus refund shall be at the sole discretion of Howard. The above options are the only remedies for any perceived breach of warranty by Howard.

In states that do not allow limitations on implied warranties or on the length of implied warranties, the above limitations may not apply to you. In states that do not allow for the exclusion or limitation of incidental and consequential damages, the above limitations and exclusions may not apply to you. This warranty gives you specific legal rights. To determine other rights you may have, review your applicable state laws.

## **2. Warranty Extensions and Upgrades**

Howard Technology Solutions currently offers various options to extend or upgrade the Limited Warranty of the Howard branded product. This extension is only available for purchase during the first year warranty coverage period from Howard Technology Solutions. Call 1-888-912-3151 for pricing and availability.

## **Limited Warranty for Tablet PC**

### **1. One Year Limited Warranty**

Howard Industries, Inc. (hereinafter "Howard") warrants that the Howard branded product(s) purchased by you will be free from defects in materials and/or workmanship under normal use for the purchased warranty period starting from the date of product shipment with the following **EXCEPTIONS**:

- m. Defective CDs, DVDs, diskettes or other software media that are delivered with your product will be replaced by Howard or its suppliers for ninety days from the date you receive your product.
- n. Howard DOES NOT WARRANT ANY SOFTWARE PRODUCTS, INCLUDING THE OPERATING SYSTEMS PREINSTALLED BY HOWARD TECHNOLOGY SOLUTIONS.
- o. Defective accessories or peripherals bundled with a Howard branded product (limited to the monitor, keyboard, and mouse) are subject to the terms of the warranty duration and type purchased from Howard Technology Solutions. All other defective accessories or peripherals, other than software, that are delivered with your product will be replaced by Howard or its suppliers for 21 days from the date you received your product. Manufacturer's warranty applies after initial 21 days.
- p. If purchased, next business day on-site warranty service is provided for the time period listed on the packing slip or invoice and begins the date of product shipment for the Howard Technology Solutions products. The hours of next business day on-site warranty service will be provided Monday – Friday from 8:00 AM to 5:00 PM local time excluding Howard Technology Solutions holidays as published on the Howard Technology Solutions website at [www.howard.com](http://www.howard.com). Second business day response at times may be required in case of delays beyond Howard Technology Solutions' control (such as acts of God or calls reported to Technical Support after 3:00 PM CST). A Howard authorized third party vendor may provide on-site service. Note: Some repairs may require the unit to be returned to Howard for depot service at an authorized service center.
- q. On-site warranty service is not available for Field Replaceable Units (FRU) such as monitors, keyboards, modular hard drives, mice, or similar external components of the product.
- r. Batteries, chargers, carrying cases, and AC power adapters for all portable systems (i.e. PDA, Laptops, Tablet PCs, etc...) are covered by a limited warranty for only the initial ONE-YEAR PERIOD after product delivery.



To obtain service under this limited warranty, you must contact Howard Technical Support within the warranty period. Technical Support personnel will work to resolve issues professionally and quickly, however, you must provide reasonable assistance in order to facilitate and/or receive support services. If Howard Technical Support is unable to correct the problem they may authorize a replacement part or parts, on-site service or a product replacement. **ON-SITE SERVICE AND PRODUCT REPLACEMENTS ARE CONSIDERED OPTIONS OF LAST RESORT.** All replaced parts must be returned to Howard. You will be invoiced for defective replacement parts not returned to Howard within two (2) weeks of receipt of the replacement parts.

Howard does not warrant damages or defects to the Howard product under the following conditions: misuse, abuse, neglect, acts of God, fire, vandalism, civil disturbances, or war, unauthorized service or repair of the Howard products, damage from electrical power problems, usage of parts or components not supplied by Howard, failure to follow product instructions and guidelines, unauthorized changes to the Howard, shipping damage (other than during original shipment from Howard), failure to perform preventative maintenance, or damage caused by peripherals or software or from other external causes.

Howard will, under the warranty period, repair or replace defective parts with new or serviceable used parts. This determination will be at the sole discretion of Howard. Howard owns all removed and repaired parts from the Howard product. The repair or replacement of a Howard product does not extend the warranty of said computer product. Spare parts are warranted to be free from defects in material or workmanship for thirty (30) days or for the remainder of the Limited Warranty Period (whichever is longer) of the Howard product in which they are installed.

This limited warranty is extended only to the original purchaser and is non-transferable. In addition, this warranty is only valid within the United States of America. For this warranty to be valid, the product must have been purchased directly from Howard or from an authorized representative of Howard.

***THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. HOWARD DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. EXCEPT FOR THE OBLIGATIONS SET FORTH IN THIS WARRANTY STATEMENT HOWARD SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR LOSSES IN PROFITS, LOSSES IN REVENUE, LOSSES IN SAVINGS, LOSSES OF DATA, DOWNTIME, COSTS OF CAPITAL, COST OF REPLACEMENT EQUIPMENT (TEMPORARY OR PERMANENT), COSTS OF TIME, THIRD PARTIES' CLAIMS OR INJURY TO PROPERTY.***

The limit of the liability of Howard to repair its computer product after a reasonable amount of time and a reasonable number of attempts shall be the replacement of the Howard product or a refund of the original purchase price of the computer product. The decision regarding replacement versus refund shall be at the sole discretion of Howard. The above options are the only remedies for any perceived breach of warranty by Howard.

In states that do not allow limitations on implied warranties or on the length of implied warranties, the above limitations may not apply to you. In states that do not allow for the exclusion or limitation of incidental and consequential damages, the above limitations and exclusions may not apply to you. This warranty gives you specific legal rights. To determine other rights you may have, review your applicable state laws.

## **2. Warranty Extensions and Upgrades**

Howard Technology Solutions currently offers various options to extend or upgrade the Limited Warranty of the Howard branded product. This extension is only available for purchase during the first year warranty coverage period from Howard Technology Solutions. Call 1-888-912-3151 for pricing and availability.

## **Limited Warranty for Teachers PET Cart**

### **1. One Year Limited Warranty**

Howard Industries, Inc. (Howard) warrants Howard presentation carts to be free from defects in materials and/or workmanship when in normal use for a period of one (1) year from the date of delivery. Consumable parts are covered by a six (6) month warranty from date of delivery. Consumable parts include, but are not limited to, fuses and lamps. Batteries are covered by a sixty (60) day performance warranty from date of delivery. Howard is not responsible for batteries that fail due to improper use or neglect. Parts required to correct any defects will be supplied at no charge and will be supported by phone consultation with Howard technical support representatives.

What is not covered by this limited warranty?

1. Products located and/or operated outside the contiguous United States, Alaska, and Hawaii
2. Products purchased from anyone other than Howard Technology Solutions or an authorized reseller/agent
3. Accessories or peripherals not sold as part of a Howard-branded system
4. Software products
5. Routine cleaning
6. Cosmetic and mechanical wear
7. Damage caused by the following:
  - Misuse, abuse, neglect, acts of God, fire, vandalism, civil disturbances, or war
  - Failure to follow product instructions and/or guidelines
  - Failure to perform preventive maintenance
  - Damage from electrical power problems
  - Use outside of part's specific design usage or parameters
  - Use of non-Howard Technology Solutions manufactured or sold parts
  - Installation of parts not approved by Howard Technology Solutions
  - Repair or replacement by a non-Howard Technology Solutions authorized service partner
  - Damage from other external causes

Howard's toll-free technical support services are available at 888-323-3151, 7-days a week, 24-hours a day, excluding holidays. See the Howard Technology Solutions website for a listing of holidays. Parts needed after the warranty period has expired may be purchased from Howard Technology Solutions. Howard does not guarantee the availability of replacement parts for out of warranty equipment. Howard will attempt, when possible, to design carts with backward compatibility of parts.

To obtain services under this limited warranty, Howard technical support must be contacted within the warranty period. Technical support personnel will work to resolve issues in a professional and timely manner; however, reasonable assistance must be provided to facilitate and receive support services. It is the responsibility of the customer requesting services to gain access to the part(s) in question and to contact the Howard help desk with sufficient time to perform all basic troubleshooting procedures as directed by a Howard telephonic support representative. In the event that Howard technical support is unable to return a product to proper working order, Howard may authorize the replacement of the defective part(s). **PRODUCT REPLACEMENT IS CONSIDERED AN OPTION OF LAST RESORT.** This limited warranty provides for the replacement of Howard parts and products only. Replaced parts and products must be returned to Howard. Customers will be billed for the total cost of any replaced parts and/or products not returned. In the event that replaced parts or products are found not to be defective, customers will be responsible for all applicable shipping and service charges.

Howard will, under the warranty period, repair or replace defective parts with new or serviceable used parts. The determination of the appropriate replacement method is at the sole discretion of

Howard. Howard is the sole owner of all replaced parts from Howard products. The repair or replacement of Howard parts or products does not extend or modify product warranties.

This limited warranty is extended to the original purchaser of the Howard product only and is non-transferable. In addition, this limited warranty is only valid within the contiguous United States, Alaska, and Hawaii. Howard products must be purchased directly from Howard or from authorized representatives of Howard to qualify for coverage under this limited warranty.

**THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. HOWARD DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.**

**EXCEPT FOR THE OBLIGATIONS SET FORTH IN THIS WARRANTY STATEMENT, HOWARD SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. THIS INCLUDES, WITHOUT LIMITATION, ANY LIABILITY FOR LOSSES IN PROFITS, LOSSES IN REVENUE, LOSSES IN SAVINGS, LOSSES OF DATA, DOWNTIME, COSTS OF CAPITAL, COSTS OF REPLACEMENT EQUIPMENT (TEMPORARY OR PERMANENT), COSTS OF TIME, THIRD PARTY CLAIMS, AND INJURY TO PROPERTY.**

The limit of liability of Howard will be to replace the Howard product or to provide a refund of the original purchase price of the product in the event that a reasonable amount of time has passed and/or a reasonable number of attempts have been made to provide the services described in this warranty. The determination of the appropriate method of compensation is at the sole discretion of Howard. The methods described in this warranty are the only remedies for any perceived breach of warranty by Howard.

In states that do not allow limitations on implied warranties or on the length of implied warranties, the above limitations may not apply. Also, in states that do not allow for the exclusion or limitation of incidental and consequential damages, the above limitations and exclusions may not apply. This warranty gives the customer specific legal rights. For more information regarding warranty limitations and other details, customers may review applicable state laws.

### **Warranty Statement for Third Party Products**

Defective accessories or peripherals, other than software, that are delivered with your product or alone will be replaced by Howard for 21 days from the date you received your product. Manufacturers' warranty applies after initial 21 days. In addition, all standard manufacturers' warranties will be serviced by Howard (usually 1 year limited warranty). Howard will provide the warranty service and maintenance for this on all equipment under this contract in the Master Price Agreement as well as the Takeback Program.

## EXHIBIT B – COMPLAINT RESOLUTION

WSCA customers have two main avenues to choose from with any complaints/issues. Issues can be divided into two main categories: technical issues and non-technical issues. Non-technical issues may be addressed by calling our WSCA Contract Representative: Melissa Reeves via our toll free number at 1-888-912-3151 or via her direct line at 601-399-5680 or via email at [mreeves@howard.com](mailto:mreeves@howard.com). Melissa can assist any WSCA customer with issues such as invoicing/billing problems, order status, delivery changes or instructions or any other issues that do not involve technical/repair type issues concerning the computers or the order. Melissa handles all such problems herself. If a problem occurs that she cannot immediately resolve to the customer's satisfaction, she then takes that problem directly to the Executive Vice President of HTS, Kyle McCoy or the President of New Business Development, Cyndi McCoy. If they are unavailable or unable to solve the issue, it is taken directly to the corporate President or CEO for resolution. Most issues of this type can be solved a matter of minutes or in the extreme within 24 hours.

If issues of a technical nature should arise, our Customer Service Department is available to resolve them. The Customer Service Department can be reached via our toll free number at 1-888-323-3151 or via the website at [www.howardcomputers.com](http://www.howardcomputers.com). Below you will find the problem resolution and escalation procedures for the Customer Service Department at Howard Technology Solutions

Howard Technology Solutions has an outstanding initial call response time. On average, Howard Technology Solutions Customer Service technicians answer an incoming Customer Service calls within forty-five (45) seconds. A "live" technician answers 89% of calls to the Howard Technology Solutions Customer Service toll free line. This is far better than the industry average, as is evidenced by the below chart. The not-to-exceed time established by Howard Technology Solutions is one (1) minute.

	Howard Technology Solutions	Dell*	Gateway*	Hewlett-Packard*	Compaq*	IBM*
Average time on hold (min:sec)	1:00	9:54	11:36	10:18	10:18	11:18

Through Howard Technology Solutions' toll free phone support, 7x24x365, our customers have the ability to make one phone call to initiate the warranty service process. Upon receipt of an initial customer service call, a Tier one (1) Customer Service technicians will first attempt to diagnoses the issue and obtain a problem resolution within the initial phone call. Problem resolution for customer phone calls is typically between five (5) minutes and one (1) hour depending on type of problem and level of customer's computer knowledge. If an on-site service call is required, which is typically next business day, the service representative will consults with the Customer Support Manager to determine the most efficient means of supporting that customer. All serviceable parts (new or used) are shipped via UPS next business day delivery service. Within one hour of confirming that onsite is needed, a support representative will be contacted to provide the next business day on-site support. In all areas and instances where it is in the customer's best interest, we will utilize one of our third party contract support representatives, located within your geographical area, to expedite the next business day on-site service. Under special circumstances, if the problem is large-scale and requires the attention of a direct Howard Technology Solutions' employee then Howard Technology Solutions' employee will be contacted and dispatched, regardless of geographic area, instead of utilizing one of our contract support representatives.

Also, Howard Technology Solutions has established clear guidelines within the Customer Service organization regarding problem escalation. A description of the problem escalation rules and three tiers of Howard Technology Solutions' technical support organization are provided below:

### Problem Escalation Rules:

1. Customer Service Technician is unable to resolve customer's issue/problem on third attempt. (An attempt is defined as either, phone conversation, email instructions and/or service technician onsite.).
2. Customer expresses dissatisfaction with service being provided by the Howard Technology Solutions' customer service technician.
3. Customer becomes agitated and/or angry with customer service technician.
4. Customer Service Technician requires additional assistance in resolving customer's issue/problem.

**Tiers\Level of support:**

Tier One Customer Service technicians have a minimum of one year of customer service experience and are familiar with Vista, Win9x, Win 2000, Win XP, Win NT, and Novell operating system environments and standard office application products. They are familiar with basic to mid-level diagnostic procedures and trouble shooting techniques for hardware and software.

Tier Two Customer Service Technicians have a minimum of two years of customer service experience and are familiar with Vista, Win9x, Win 2000, Win XP, Win NT, and Novell operating system environments and advanced office application products. They are familiar with advanced diagnostic procedures and trouble shooting techniques for hardware and software.

Tier Three Customer Service is staffed by the Howard Technology Solutions Engineering Department's engineers and engineering technicians. These engineers and engineering technicians provide the Customer Service Department with a high degree of expertise, experience, and educational background. The Engineering Department gives ready access to Microsoft Certified Systems Engineers (MCSE), Certified Novell Engineers (CNE), COMPTIA A+ technicians, and electrical and computer engineers.

## EXHIBIT C – VALUE-ADDED SERVICES

Howard Technology Solutions Value Added Services offerings are broken down into three distinct categories:

1. *Network Consulting & Integration Services* consist of services that revolve around Network infrastructure development and implementation and are typically project driven.
2. *Technical Management Services* consist of support services that revolve around ongoing day to day support of technology and typically have a contracted time frame.
3. *Product Procurement Services* consist of the procurement, configuration and delivery of computer equipment.

Please see below for a detailed listing of products and services provided as value added services by Howard Technology Solutions.

- Systems Integration and Consulting Services
- Network Design, Implementation, Management and Support
  - LAN and WAN
- Network and Data Security Review
- Network Assessment
- Wireless Network Solutions
- Structured Cabling
- Customized Training Programs
- Application Development
- Internet/Intranet Development
- Web Site Hosting and Management
- Hardware Sales, Service and Support
- Software Sales, Service and Support
- Service Level Agreements – Contract for Services
  - Regularly Scheduled Preventative Maintenance
  - Full-time, On-site, Technicians and/or Engineers
  - Part-time, On-site, Technicians and/or Engineers
  - As-needed, On-site, Technicians and/or Engineers

All services discussed above are available throughout the continental United States.

A few key highlights of our value-added services can be found below,

### 1. HTPP

Howard Technology Solutions realizes that many organizations handle basic hardware service and support in one of two ways: they make a significant investment in establishing and maintaining a group of local service providers or they use their own internal support staff. For this reason, we have developed the Howard Technical Partnership Program (HTPP) so that we can satisfy either option by facilitating timely, cost effective, quality service in conjunction with our high standards for customer satisfaction.

Please see Exhibit 3 for further details of this program.

### 2. Custom Imaging

Because we understand the real-world demands many organizations face, we offer free custom imaging to make life easier for our customer purchasing desktops and notebooks. It is just another commitment to our customers and their individual needs. See Exhibit 4 for further details of this service.

### 3. Customized Box Labeling and Barcoding

### 4. Training and Installation